No. 389

In the Supreme Court of the United States

OCTOBER TERM, 1959

FEDERAL TRADE COMMISSION, PETITIONER

v.

ATLANTIC-BUDGET, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE FEDERAL TRADE COMMISSION

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Section 2(a) of the Clayton Act, as amended, prohibits discriminations in price between different purchasers "where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in *any* line of commerce, or to injure, destroy, or prevent competition with any person who either *grants* or knowingly receives the benefit of such discrimination * * *" (emphasis added).

In this case the Commission found that respondent violated Section 2 by making substantial price reductions in the St. Louis area while maintaining higher prices in all other areas, and that the effect of such price discrimination was substantially to lessen competition in the *seller's* line of commerce and tended

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to create a monopoly therein. The Commission did not find that respondent's purchasers in other areas were in competition with those in St. Louis or that its price reductions in St. Louis resulted in "losses" which respondent passed on to its customers in other areas by charging them a higher price. In the proceedings before the Commission, neither it nor respondent submitted any evidence relating to the effects, if any, of respondent's price reductions in St. Louis upon its customers in other areas. So far as the record shows, neither party considered such evidence to be relevant to the issues framed by the Commission's complaint.

In its petition for review in the Court of Appeals (R. 64–76), respondent raised three questions: (1) Whether the evidence supported the Commission's findings of injury to competition; (2) whether respondent had established an affirmative meeting-competition-in-good-faith defense under Section 2(b); and (3) whether the Commission's order was of unwarranted breadth. The petition for review presented no contention that "discrimination" could not be found because the purchasers in other areas were not competing with those in St. Louis and there was no showing that the price reductions in that market operated to the economic injury or detriment of the non-St. Louis purchasers. That contention was injected into the litigation for the first time when respondent filed its reply brief in the Court of Appeals.

As we read the opinion below (R. 1515–1521), it deals with but one question: Where there is a difference in price between purchasers in different markets

who are not competing with one another, is there "a relationship that entitles them to comparable treatment as to price"? Singling out the words "discriminate in price" and disregarding the remainder of the sentence in Section 2 which defines what discriminations in price are unlawful, the court answered the question in the negative. Accordingly, it set aside the Commission's order without reaching or considering the questions presented in respondent's petition for review.

Under the construction of the statute adopted below, it would be entirely inapplicable to price discriminations between purchasers in different areas unless adverse economic effects upon the unfavored purchasers are shown. As we have argued in our main brief, however, Section 2 on its face requires no such showing of injury to competition in the purchasers' line of commerce, and a "discrimination in price" forbidden by the Act may exist where the only injury is to the competition of other sellers in the area where the lower price is charged. A requisite finding of injury to competition either in the primary (seller's) line of commerce or in the secondary (purchasers') line suffices under Section 2. There need not be identity in the line of commerce in which the price discrimination occurs and that in which the injury to competition results.

In its brief in this Court, respondent appears to agree, in large measure at least, with the Government's construction of the statute. It concedes throughout its brief (*e.g.*, pp. 20, 23, 24, 31) that Section 2 prohibits so-called territorial or geo-

graphical price discriminations between purchasers in different areas where the only injury to competition is in the seller's line of commerce. This seems to be, in substance, a confession of error to the extent that the Court of Appeals has held (as we believe its opinion clearly shows) to the contrary. Respondent argues, however, that the Government has read the opinion below too narrowly, and that the court below has not held that the purchasers must be *competing* with each other before there can be a discrimination in price. Relying mainly on the statement of Representative Utterback quoted by the court below (R. 1519), respondent finds in the opinion an implicit holding that where price reductions in one area involve a sacrifice of the seller's costs or profits which must be made up by charging a higher price to purchasers in other areas, the latter are "discriminated against" even though no competitive relationship exists between purchasers in the different areas. As respondent reads the opinion below, the court set aside the Commission's order because there was no allegation or proof that respondent's price reductions in St. Louis were below its cost or unreasonably low, and that its losses in that area were passed on to its customers in other areas by charging them a higher price. Accordingly, there was no relationship entitling purchasers in other areas to "comparable treatment" with the St. Louis purchasers, and hence there was no "discrimination."

Assuming *arguendo* that respondent is correct in its reading of the opinion, it would still be true that the

Court of Appeals has misconstrued the statute by making "discrimination" depend on a showing not only that purchasers in other markets were charged a higher price but that they were adversely affected by the price differential. Under such a view of the statute, its prohibitions on territorial price raids, no matter how destructive to competition, would be confined to those situations where it could be shown that the price cutter was, by increasing his prices in other areas, passing on to customers in those areas the losses he was suffering in the area of the price cut. It would leave respondent and other dominant business organizations free to conduct the very territorial price forays which Section 2 of the Clayton Act was intended to prevent (see our main brief, pp. 13–16) so long as they were willing to absorb any temporary short-term losses (or lessening of profits) to gain their long-term objectives.

Even respondent recognizes that it was under a statutory duty not to "discriminate" in price between its purchasers in different markets, though they were not competing with one another. It concedes, as it must under the controlling precedents (Resp. Br. 37–44), that a seller who lowers his price in one area but not in others is "discriminating" in price, even in the absence of any competitive or other relationship between the purchasers in different areas, at least where the price reduction is made with the purpose or design to eliminate competition or to establish monopoly. In such situations, exemplified by *Moore* v. *Mead's Fine Bread Co.*, 348 U.S. 115, and *Maryland Baking Co.* v. *Federal Trade Commission*, 243 F. 2d 716 (C.A. 4), violation of the Act was found without any show-

ing that "losses" suffered by the seller as a result of the price reductions were passed on to purchasers in other markets in the form of higher prices. The only injury to competition in those cases was in the seller's line of commerce, and apparently no one thought it relevant to inquire whether purchasers in other markets had a "relationship entitling them to comparable treatment as to price". Yet those are the cases on which respondent principally relies.

One thing is crystal clear in the opinion below: that the court did not question or even consider the adequacy of the Commission's findings that respondent's price reductions in the St. Louis area had the injurious effects on competition required under Section 2. The court expressly assumed (R. 1518) that these pricing practices were directed at respondent's competitors in St. Louis and that competition in their line of commerce was substantially lessened thereby. There is not the slightest intimation in the opinion that the Commission's order was deemed invalid because of any inadequacy or defect, factually or legally, in the Commission's findings as to injury to seller's competition.

The opinion does not discuss whether the price cuts were deep or shallow, whether they were below cost or unreasonably low, whether they were "normal" pricing activities in a competitive market, or whether they were made for the purpose or design of eliminating competitors. The court accepted, for purposes of its decision, the Commission's position that its "'proceeding was designed to stop a predatory pricing practice, a practice by which a national seller can disrupt any given market to the injury of its local

competitors in that market.'" (R. 1518.) Furthermore, the court below treated the facts of this case as "lying expressly within the scope of section 3" of the Robinson-Patman Act, which imposes criminal sanctions on the sale of goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor (R. 1521).

Thus, the plain holding of the court below is that, no matter how severely price reductions injure or destroy the seller's competitors in the area and even though they may be "predatory" and for the purpose of driving the competitors out of business and establishing a monopoly, there is no "discrimination" under the Act because the essence of discrimination is that there be injury or disadvantage to those allegedly discriminated against, to wit, the purchasers in other areas who are charged the higher price.

We have pointed out that the words "discrimination in price" do not appear in the statute as a naked, isolated phrase. "Discrimination" in legal usage means a differentiation in treatment which, judged by the controlling legal standard, is invidious and unlawful. Here, too, Congress did not condemn "price discriminations" in the abstract. It laid down, for the guidance of the Commission, the courts, and the business world, governing standards for determining when a price differential is valid and when it is not.

Respondent expresses apprehension that the Commission's position in this case will preclude "normal pricing activities that have no antitrust significance". But the Act leaves neither the Commission nor the courts at large in determining, for purposes of Section 2, the legality of pricing activities. Broadly speaking,

whether a price difference is a prohibited "discrimination" depends on its injurious or destructive effects on competition, as defined in the section, and on whether it can be justified within the various statutory defenses set out in the provisos to Section 2. Of course, it is not the Commission's position that every price differential is *ipso facto* such a "discrimination in price" as is forbidden by the Act. To be unlawful the Commission must find, on the basis of supporting facts, that the "discrimination" has the injurious or destructive effects on competition specified by Section 2(a). And, as this Court has pointed out, "Even if any price differential were to be comprehended within the term 'discrimination in price,' [the Act] * * * cannot be read as declaring out of bounds price differentials within one or more of the 'defenses' available to sellers, such as that the price differentials reflect cost differences, fluctuating market conditions, or bona fide attempts to meet competition, as those defenses are set out in the provisos of §§ 2(a) and 2(b)."[1] *Automatic Canteen Co.* v. *Federal Trade Commission*, 346 U.S. 61, 71.

There is a significant difference, legally as well as factually, between normal and legitimate pricing activities designed to obtain a larger share of business in a marketing area and those which represent a punitive or destructive attack on local competitors and impair the vitality and health of the processes of competition.

[1] For the convenience of the Court, we are setting out in the Appendix the full text of Section 2 of the Clayton Act, both in its original form and as amended by the Robinson-Patman Act, and Section 3 of the latter Act.

It may be that in some cases the line will be a fine or difficult one to draw, but Congress has entrusted to the Federal Trade Commission, subject to appropriate judicial review, the function of distinguishing between the two types of competitive behavior and determining whether the effects of particular pricing differentials "may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination * * *."

We submit, therefore, that the clear error of statutory construction made by the court below in dealing with the words "discrimination in price" (an error which respondent seems to acknowledge), finding in them a requirement that there be economic injury or disadvantage to the unfavored purchasers in other markets who are charged the higher price, requires that there be a reversal and remand. It would be inappropriate for us to argue here the two questions which respondent discusses in Point II of its brief, *viz.*, whether the evidence supported the Commission's findings as to injury to competition, and whether respondent has a sufficient meeting-competition-in-good-faith defense under Section 2(b). Because of its error at the threshold of the appeal, the court below did not reach or consider those questions. On remand, they will be open for full examination and argument in the court below. Involving, as they do, mixed issues of law and fact which must be canvassed in the light of a 3-volume printed record of more than 1500 pages, they are not appropriate for *de novo*

review here, as is more fully pointed out in our main brief, pp. 25–28.[2]

One final observation must be made. Throughout its brief (*e.g.*, pp. 20, 22, 25, 28, 37, 44) respondent argues that the Act requires proof that the lower price is below cost or unreasonably low and for the purpose or design to eliminate a competitor and thereby obtain a monopoly. This is an argument, not as to the meaning of "discrimination in price", but as to what injuries to competition, inflicted with what purpose, are prohibited by the Act—a question not reached by the court below and not mentioned in its opinion. This question, too, will be open on remand to the Court of Appeals.

We may briefly note here, however, that respondent's argument would, if accepted, engraft upon Section 2 the standard of proof required under Section 3, the criminal provision. While the two sections, as this Court has noted (*Nashville Milk Co.* v. *Carnation Co.*, 355 U.S. 373, 378), partially overlap, Section 3 "includes a provision which is *not* found in § 2 of the Clayton Act, namely, selling 'at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.'" (*Ibid.*; italics in original.) Section 2 "is designed to reach such

[2] Respondent has lodged with the Clerk of this Court copies of the Commission's brief in the Court of Appeals, which deals entirely with the questions not reached by the court below. Even a cursory examination of that brief, compared with the discussion contained in Point II of respondent's brief in this Court, will suffice to show the broad range of inquiry which is required for resolution of the controversy between the parties on those questions, emphasizing the appropriateness of their being reviewed initially by the court below.

discriminations [in price] 'in their incipiency,' before the harm to competition is effected. It is enough that they 'may' have the prescribed effect. Cf. *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U.S. 346, 356–357." *Corn Products Co.* v. *Federal Trade Commission*, 324 U.S. 726, 738; *Federal Trade Commission* v. *Morton Salt Co.*, 334 U.S. 37, 46. Even if a showing of "predatory" design were essential to a finding of unlawful injury to competition under Section 2, respondent errs in contending that such a showing was not made in the instant case. (See our main brief, p. 25, footnote 19.) At all events, that is a matter for the Court of Appeals to consider on remand, and we do not argue the point here.[3]

Respectfully submitted.

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FEBRUARY 1960.

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[3] We cannot leave unanswered respondent's assertion (Br. 32–33) that the Government's brief

> * * * is less than candid in discussing the legislative history of Section 2 of the Clayton Act (1914) * * * by conveniently omitting every reference in the report [of the House Judiciary Committee] to the real intent of Congress—to prohibit only price reductions or differences, usually below cost, made with the purpose or intent to destroy competition and thereby obtaining a monopoly. In order that this Court may appreciate the extent to which

the Commission has misstated the legislative history underlying the passage of the 1914 act, we are attaching as Appendix 2 the complete House Judiciary Report insofar as it deals with Section 2 of the Clayton Act. It will be noted that there are repeated references in the Report to the nature of the price differences which were being proscribed, and that there was no intent to proscribe all territorial price differences or reductions but only those which were undertaken with an intent to destroy competition and obtain a monopoly.

Respondent has apparently overlooked a significant difference between Section 2, as passed by the House, and the form in which it was finally enacted. As passed by the House (H.R. 15657) Section 2 made it a misdemeanor to discriminate in price between different purchasers "with the purpose or intent thereby to destroy or wrongfully injure the business of a competitor, of either such purchaser or seller". The quoted language was stricken out in the Senate, and the bill, as agreed to in conference and passed, substituted, in lieu of the "purpose or intent" provision, the following standard for determining legality of price discriminations: "where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce." The Senate also deleted the criminal sanction. See Sen. Doc. No. 584, 63d Cong., 2d Sess., p. 4 (1914).

It is clear, therefore, that the portion of the House Committee report upon which respondent so heavily relies, and the omission of which in the Government's brief is criticized, refers to a provision of the House bill which was ultimately rejected by Congress. The legal significance of the deletion of this provision, and the inferences which may properly be drawn therefrom in determining the kind of injurious or destructive effects on competition required under Section 2, need not be considered by the Court at this stage of the litigation. As already shown, that question was not decided by the court below and is not here for review, but will be open for consideration on remand.

APPENDIX

CLAYTON ACT (1914)

Section 2 of the Clayton Act, 38 Stat. 730, provided:

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided,* That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further,* That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Robinson-Patman Act (1936)

Section 2 of the Clayton Act was amended by the Robinson-Patman Act, 49 Stat. 1526, to read as follows:

> Sec. 2. (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided,* That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however,* That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit

differentials based on differences in quantities greater than those so fixed and established: *And provided further,* That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further,* That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale

or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) That it shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

Section 3 of the Robinson-Patman Act, 49 Stat. 1526, 1528, provides:

> SEC. 3. It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.
>
> Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.

U.S. GOVERNMENT PRINTING OFFICE: 1960

SUPREME COURT OF THE UNITED STATES

No. 389.—October Term, 1959.

Federal Trade Commission, Petitioner, *v.* Anheuser-Busch, Inc.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June 20, 1960.]

Mr. Chief Justice Warren delivered the opinion of the Court.

The question presented is whether certain pricing activities of respondent, Anheuser-Busch, Inc., constituted price discrimination within the meaning of § 2 (a) of the Clayton Act, 38 Stat. 730, as amended by the Robinson-Patman Act, 49 Stat. 1526, 15 U. S. C. § 13 (a).

Section 2 (a) provides in pertinent part:

> "That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them. . . ."

This controversy had its genesis in a complaint issued by the Federal Trade Commission in 1955, which charged respondent, a beer producer, with a violation of § 2 (a). The complaint alleged that respondent had "discriminated in price between different purchasers of its beer of like grade and quality by selling it to some of its customers at higher prices than to other[s]"; that, more specifically, respondent had lowered prices in the St. Louis, Missouri, market, without making similar price reductions in other markets; that this discrimination had already diverted substantial business from respondent's St. Louis competitors; that it was "sufficient" to have the same impact in the future; that there was a "reasonable probability" it would substantially lessen competition in respondent's line of commerce; and that it might also tend to create a monopoly or to injure, destroy, or prevent competition with respondent. Thus the complaint described a pricing pattern which had adverse effects only upon sellers' competition, commonly termed primary-line competition, and not upon buyers' competition, commonly termed secondary-line competition.

Both the hearing examiner and, on appeal, the Commission held that the evidence introduced at the hearing established a violation of § 2 (a). The Commission found the facts to be as follows:

Respondent, a leading national brewer,[1] sells a so-called premium beer, which is priced higher than the beers of regional and local breweries in the great majority of markets, although both the price of respondent's beer and the premium differential vary from market to market and from time to time. During the period relevant to this case, respondent had three principal competitors in the St. Louis area, all regional breweries: Falstaff Brewing

[1] Anheuser-Busch ranked second nationally in gross sales in 1952 and 1955, and first in 1953 and 1954.

Corporation, Griesedieck Western Brewing Company, and Griesedieck Brothers Brewery Company.[2] In accord with the generally prevailing price structure, these breweries normally sold their products at a price substantially lower than respondent's.

In 1953, most of the national breweries, including respondent, granted their employees a wage increase, and on October 1, 1953, they put into effect a general price increase.[3] Although many regional and local breweries throughout the country followed suit by raising their prices, Falstaff, Griesedieck Western and Griesedieck Brothers maintained their pre-October price of $2.35 per standard case. Although respondent's sales in the St. Louis area did not decline, its national sales fell, along with industry sales in general.

On January 4, 1954, respondent lowered its price in the St. Louis market from $2.93 to $2.68 per case, thereby reducing the previous 58¢ differential to 33¢. A second price cut occurred on June 21, 1954, this time to $2.35, the same price charged by respondent's three competitors. On January 3, 1954, the day before the first price cut, respondent's price in the St. Louis market had been lower

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[2] It appears that Griesedieck Western sold out to Carling Brewing Company in October, 1954.

[3] Respondent maintains—and petitioner agrees—that the evidence establishes that it did not raise its prices in Missouri or Wisconsin. In view of our disposition of the case, this is immaterial to the issue presented on this review.

Possibly we should note that most of the facts in this particular paragraph are taken from the initial decision. Although the Commission adopted "the findings, conclusions, and order, as modified contained in the initial decision," there is some disagreement as to how encompassing this incorporation order was. See note 10, *infra*. Since that dispute concerns matters not relevant to our decision, and since the facts set forth above are merely background and appear to be unquestioned, we find it unnecessary to resolve the disagreement

than its price in other markets,[4] and during the period of the price reductions in the St. Louis area, respondent made no similar price reductions in any other market. In March, 1955, respondent increased its St. Louis price 45¢ per case, and Falstaff, Griesedieck Western, and Griesedieck Brothers almost immediately raised their prices 15¢, which re-established a substantial differential. This ended the period of alleged price discrimination.

The Commission concluded:

> "As a result of maintaining higher prices to all purchasers outside of the St. Louis area and charging the lower prices, as reduced in 1954, to only those customers in the St. Louis area, respondent discriminated in price as between purchasers differently located."

Since, as will appear, it is this aspect of the decision which concerns us, it is necessary only to sketch summarily the remaining elements in the Commission's decision. The Commission's finding of competitive injury was predicated to a substantial degree upon what it regarded as a demonstrated diversion of business to respondent from its St. Louis competitors during the period of price discrimination. For example, by comparing that period with a similar period during the previous year, the Commission determined that respondent's sales had risen 201.5%, Falstaff's sales had dropped slightly, Griesedieck Western's sales had fallen about

[4] The following table discloses the degree of this price spread:

St. Louis, Mo.	$2.93	Washington, D. C.	$3.65
Chicago, Ill.	3.44	Detroit, Mich.	3.55
Cincinnati, Ohio	3.75	Boston, Mass.	3.69
Houston, Tex.	3.70	Kansas City, Mo.	3.15
Bronx, N. Y.	3.68	St. Paul, Minn.	3.53
Kearney, Nebr.	3.68	Sioux Falls, S. Dak.	3.50
St. Joseph, Mo.	3.17	Denver, Colo.	...
Buffalo, N. Y.	3.60	San Francisco, Calif.	3.79
Baltimore, Md.	3.62	Los Angeles, Calif.	3.80

33%, and Griesedieck Brothers' sales had plummeted about 41%. In tabular form, the relative market positions of the St. Louis sellers were as follows:

	Dec. 31 1953	*June 30 1954*	*Mar. 1 1955*	*July 31 1955*
Respondent	12.5	16.55	39.3	21.03
Griesedieck Brothers	14.4	12.58	4.8	7.36
Falstaff	29.4	32.05	29.1	36.62
Griesedieck Western	38.9	33.	23.1	27.78
All others	4.8	5.82	3.94	7.21

The Commission rejected respondent's contention that its price reductions had been made in good faith to meet the equally low price of a competitor within the meaning of the proviso to § 2 (b) of the Act, 49 Stat. 1526, 15 U. S. C. § 13 (b), and also found respondent's attack upon the examiner's cease-and-desist order to be meritless. The Commission thereupon adopted and issued that order, with only slight modification.[5]

On review, the Court of Appeals set aside the order. 265 F. 2d 677. We granted certiorari, 361 U. S. 880, because a conflict had developed among the Courts of Appeals on a question of importance in the administration of the statute. See *Atlas Building Products Co.* v. *Diamond Block & Gravel Co.*, 269 F. 2d 950 (C. A. 10th Cir.), *petition for cert. filed* Oct. 13, 1959.

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[5] It Is Ordered, that the respondent, Anheuser-Busch, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in the sale of beer of like grade and quality, do forthwith cease and desist from discriminating, directly or indirectly, in price, between different purchasers engaged in the same line of commerce, where either, or any, of the purchases involved in such discrimination are in commerce, as 'commerce' is defined in the Clayton Act, by a price reduction in any market where respondent is in competition with any other seller, unless it proportionally reduces its prices everywhere for the same quantity of beer."

The limited nature of our inquiry can be fully appreciated only in the light of the correspondingly narrow decision of the Court of Appeals, which rested entirely upon the holding that the threshold statutory element of price discrimination had not been established. Thus the Court of Appeals did not consider whether the record supported a finding of the requisite competitive injury, whether respondent's good faith defense was valid, or whether the Commission's order was unduly broad. We have concluded that the Court of Appeals erred in its construction of § 2 (a) and that the evidence fully warranted the Commission's finding of price discrimination. Respondent would have us affirm nonetheless on any of the alternative grounds it strongly urged below. While this is, to be sure, an appropriate course of action under proper circumstances, we believe that it would be unwise for us to grapple with these intricate problems, the solution to which requires a careful examination of a voluminous record, before they have been dealt with by the Court of Appeals. Therefore, the case will be remanded, and of course nothing in this opinion should be interpreted as intimating a view upon the remaining aspects of the controversy.

A discussion of the import of the § 2 (a) phrase "discriminate in price," in the context of this case, must begin with a consideration of the purpose of the statute with respect to primary-line competition. The Court of Appeals expressed some doubt that § 2 (a) was designed to protect this competition at all, but respondent has not undertaken to defend that position here. This is entirely understandable. While "precision of expression is not an outstanding characteristic of the Robinson-Patman Act," *Automatic Canteen Co.* v. *Federal Trade Comm'n*, 346 U. S. 61, 65, it is certain at least that § 2 (a) is violated where there is a price discrimination which deals the requisite injury to primary-line competition, even

though secondary-line and tertiary-line competition are unaffected. The statute could hardly be read any other way, for it forbids price discriminations "where the effect . . . may be substantially to lessen competition or tend to create a monopoly *in any line of commerce*, or to injure, destroy, or prevent competition with any person *who either grants* or knowingly receives the benefit of such discrimination, or with customers of either of them." (Emphasis added.)

The legislative history of § 2 (a) is equally plain. The section, when originally enacted as part of the Clayton Act in 1914, was born of a desire by Congress to curb the use by financially powerful corporations of localized price-cutting tactics which had gravely impaired the competitive position of other sellers.[6] It is, of course, quite true—and too well known to require extensive exposition—that the 1936 Robinson-Patman amendments to the Clayton Act were motivated principally by congres-

[6] "Section 2 of the bill . . . is expressly designed with the view of correcting and forbidding a common and widespread unfair trade practice whereby certain great corporations and also certain smaller concerns which seek to secure a monopoly in trade and commerce by aping the methods of the great corporations, have heretofore endeavored to destroy competition and render unprofitable the business of competitors by selling their goods, wares, and merchandise at a less price in the particular communities where their rivals are engaged in business than at other places throughout the country. . . . In the past it has been a most common practice of great and powerful combinations engaged in commerce—notably the Standard Oil Co., and the American Tobacco Co., and others of less notoriety, but of great influence—to lower prices of their commodities, oftentimes below the cost of production in certain communities and sections where they had competition, with the intent to destroy and make unprofitable the business of their competitors, and with the ultimate purpose in view of thereby acquiring a monopoly in the particular locality or section in which the discriminating price is made. . . ." H. R. Rep. No. 627, 63d Cong., 2d Sess. 8. See also S. Rep. No. 698, 63d Cong., 2d Sess. 2–4.

sional concern over the impact upon secondary-line competition of the burgeoning of mammoth purchasers, notably chain stores.[7] However, the legislative history of these amendments leaves no doubt that Congress was intent upon strengthening the Clayton Act provisions, not weakening them, and that it was no part of Congress' purpose to curtail the pre-existing applicability of § 2 (a) to price discriminations affecting primary-line competition.[8]

The federal courts, both before and after the amendment of § 2 (a), have taken this view of the scope of the statute in cases involving impairment of primary-line competition. See *Porto Rican American Tobacco Co.* v. *American Tobacco Co.*, 30 F. 2d 234 (C. A. 2d Cir. 1929); *E. B. Muller & Co.* v. *Federal Trade Comm'n*, 142 F. 2d 511 (C. A. 6th Cir. 1944); *Maryland Baking Co.* v. *Federal Trade Comm'n*, 243 F. 2d 716 (C. A. 4th Cir. 1957); *Atlas Building Products Co.* v. *Diamond Block & Gravel Co., supra* (1959). In fact, the original focus of § 2 (a) on sellers' competition was so evident that this Court was compelled to hold explicitly, contrary to lower court decisions,[9] that the statute was not *restricted* to price discriminations impeding primary-line competition, but protected secondary-line competition as well. *Van Camp & Sons* v. *American Can Co.*, 278 U. S. 245 (1929). And

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[7] See H. R. Rep. No. 2287, 74th Cong., 2d Sess.; S. Rep. No. 1502, 74th Cong., 2d Sess.; F. T. C., Final Report on the Chain-Store Investigation, S. Doc. No. 4, 74th Cong., 1st Sess.; *Federal Trade Comm'n* v. *Morton Salt Co.*, 334 U. S. 37, 43; Att'y Gen. Nat'l Comm. Antitrust Rep. 155–156; Austin, Price Discrimination and Related Problems under the Robinson-Patman Act (2d rev. ed. 1959), 8–11; Palamountain, The Politics of Distribution, 188–234; Rowe, The Evolution of the Robinson-Patman Act: A Twenty-Year Perspective, 57 Col. L. Rev. 1059.

[8] See sources cited in note 7, *supra*.

[9] See *Mennen Co.* v. *Federal Trade Comm'n*, 288 F. 774; *National Biscuit Co.* v. *Federal Trade Comm'n*, 299 F. 733.

more recently, in *Moore* v. *Mead's Fine Bread Co.*, 348 U. S. 115 (1954), the Court sustained a treble damage judgment in favor of a competing seller which was based partly upon a violation of § 2 (a).

Thus neither the language of § 2 (a), its legislative history, nor its judicial application countenance a construction of the statute which draws strength from even a lingering doubt as to its purpose of protecting primary-line competition. But the rationale of the Court of Appeals appears to have been shaped by precisely this type of doubt. The view of the Court of Appeals was that, before there can be a price discrimination within the meaning of § 2 (a), "[t]here must be some relationship between the different purchasers which entitles them to comparable treatment." 265 F. 2d, at 681. Such a relationship would exist, the court reasoned, if different prices were being charged to *competing* purchasers. But the court observed that in this case all *competing* purchasers paid respondent the same price, so far as the record disclosed. Consequently, the court concluded that, even assuming the price cuts "were directed at [Anheuser-Busch's] local competitors, they were not *discriminatory*." [10] *Ibid.*

This qualification upon the applicability of § 2 (a) to primary-line competition cases is in no way adumbrated by the prevailing line of relevant decisions. In *Mead's Fine Bread Co., supra*, in *Maryland Baking Co., supra*, and in *Porto Rican American Tobacco Co., supra*, violations of § 2 (a) were predicated upon injury to primary-line competition without reliance upon the presence or absence of competition among purchasers as a relevant

[10] There is a dispute as to whether the Commission adopted a finding by the examiner which related to the purpose of the price reductions. Since we conclude that the issue of predatory intent is irrelevant to the question before us, it is unnecessary for us to resolve this dispute.

factor. And in *Muller & Co., supra*, while there was evidence that the purchasers in question were competing the court explicitly rejected the notion that this was a necessary element of a violation in a primary-line case 142 F. 2d, at 518. But cf. *Balian Ice Cream Co.* v. *Arden Farms Co.*, 231 F. 2d 356.

More important, however, is the incompatibility of the Circuit Court's rule with the purpose of § 2 (a). The existence of competition among buyers who are charged different prices by a seller is obviously important in terms of adverse effect upon secondary-line competition, but it would be merely a fortuitous circumstance so far as injury to primary-line competition is concerned. Since, as we have indicated, an independent and important goal of § 2 (a) is to extend protection to competitors of the discriminating seller, the limitation of that protection by the alien factor of competition among purchasers would constitute a debilitating graft upon the statute.

Although respondent's starting point is the same as that of the Court of Appeals—that a price discrimination is not synonymous with a price difference—its test of price discrimination is somewhat broader.[11] Respondent concedes that a competitive relationship among purchasers is not a prerequisite of price discrimination, but maintains that at least there must be "proof that the lower price is below cost or unreasonably low for the purpose or design to eliminate competition and thereby obtain a monopoly." Since such a finding is lacking here, respondent argues that it cannot be said that there was price discrimination.

Respondent asserts that its view is supported by legislative history, court decisions, and reason. Respondent

[11] Respondent maintains that the opinion of the Court of Appeals may and should be read to encompass respondent's views. It is true that there are certain passages in the opinion which lend some support to respondent's interpretation. In view of our disposition of the case, it is unnecessary for us either to accept or reject that construction.

relies heavily, as did the Court of Appeals, upon a statement made during Congress' consideration of the Robinson-Patman legislation by Representative Utterback, a manager of the conference bill which became § 2 (a). In this rather widely quoted exegesis of the section, Representative Utterback declared that "a discrimination is more than a mere difference," and exists only when there is "some relationship . . . between the parties to the discrimination which entitles them to equal treatment." Such a relationship would prevail among competing purchasers, according to the Congressman, and also "where . . . the price to one is so low as to involve a sacrifice of some part of the seller's necessary costs and profit," so that "it leaves that deficit inevitably to be made up in higher prices to his other customers." 80 Cong. Rec. 9416.[12] Respondent also cites expressions in the legislative history of the Clayton Act which reflect Congress' concern over classic examples of predatory business practices. See H. R. Rep. No. 627, 63d Cong., 2d Sess. 8; S. Rep. No. 698, 63d Cong., 2d Sess. 2–4. Moreover, respondent maintains that the principle it advances

[12] The statement in full is as follows:

"In its meaning as simple English a discrimination is more than a mere difference. Underlying the meaning of the word is the idea that some relationship exists between the parties to the discrimination which entitles them to equal treatment, whereby the difference granted to one casts some burden or disadvantage upon the other. If the two are competing in the resale of the goods concerned, that relationship exists. Where, also, the price to one is so low as to involve a sacrifice of some part of the seller's necessary costs and profit as applied to that business, it leaves that deficit inevitably to be made up in higher prices to his other customers; and there, too, a relationship may exist upon which to base the charge of discrimination. But where no such relationship exists, where the goods are sold in different markets and the conditions affecting those markets set different price levels for them, the sale to different customers at those different prices would not constitute a discrimination within the meaning of this bill."

has found expression in the decisions of the federal courts in primary-line competition cases, which consistently emphasize the unreasonably low prices and the predatory intent of the defendants.[13] Respondent also urges that its view is grounded upon the statutory scheme of § 2 (a), which penalizes sellers only if an anticompetitive effect stems from a *discriminatory* pricing pattern, not if it results merely from a low price. Thus, the argument goes, unless there is proof that high prices in one area have subsidized low prices in another, the price differential does not fall within the compass of the section. In such a case, it is contended, § 3 of the Robinson-Patman Act, 49 Stat. 1528, 15 U. S. C. § 13a, may be applicable, but not § 2 (a).[14] Finally, respondent argues that, unless its position is accepted, the law will impose rigid price uniformity upon the business world, contrary to sound economics and the policy of the antitrust laws.

The trouble with respondent's arguments is not that they are necessarily irrelevant in a § 2 (a) proceeding, but

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[13] See, *e. g.*, *Porto Rican American Tobacco Co.* v. *American Tobacco Co.*, *supra*; *Atlas Building Products Co.* v. *Diamond Block & Gravel Co.*, *supra*; *Maryland Baking Co.* v. *Federal Trade Comm'n*, *supra*.

[14] Section 3 provides:

"It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor."

that they are misdirected when the issue under consideration is solely whether there has been a price discrimination. We are convinced that, whatever may be said with respect to the rest of §§ 2 (a) and 2 (b)—and we say nothing here—there are no overtones of business buccaneering in the § 2 (a) phrase "discriminate in price." Rather, a price discrimination within the meaning of that provision is merely a price difference.

When this Court has spoken of price discrimination in § 2 (a) cases, it has generally assumed that the term was synonymous with price differentiation. In *Federal Trade Comm'n* v. *Cement Institute*, 333 U. S. 683, 721, the Court referred to "discrimination in price" as "selling the same kind of goods cheaper to one purchaser than to another." And in *Federal Trade Comm'n* v. *Morton Salt Co.*, 334 U. S. 37, 45, the Court said, "Congress meant by using the words 'discrimination in price' in § 2 that in a case involving competitive injury between a seller's customers the Commission need only prove that a seller had charged one purchaser a higher price for like goods than he had charged one or more of the purchaser's competitors." [15] The commentators have generally shared this view.[16]

These assumptions, we now conclude, were firmly rooted in the structure of the statute, for it is only by equating

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[15] See also *Federal Trade Comm'n* v. *Staley Co.*, 324 U. S. 746, 757; *Samuel H. Moss, Inc.* v. *Federal Trade Comm'n*, 148 F. 2d 378, 379, 155 F. 2d 1016. Compare *Automatic Canteen Co.* v. *Federal Trade Comm'n*, *supra*, at 70 n. 10, 71.

[16] See Att'y Gen. Nat'l Comm. Antitrust Rep. 156; Austin, Price Discrimination and Related Problems Under the Robinson-Patman Act (2d rev. ed. 1959), 18–20; McAllister, Price Control by Law in the United States: A Survey, 4 Law and Contemp. Prob. 273, 291–293; Rowe, Price Differentials and Product Differentiation: The Issues Under the Robinson-Patman Act, 66 Yale L. J. 1, 36–38; Comment, 12 Stan. L. Rev. 460, 461. But see Zorn and Feldman, Business Under The New Price Laws, 75.

price discrimination with price differentiation that § 2 (a) can be administered as Congress intended. As we read that provision, it proscribes price differences, subject to certain defined defenses,[17] where the effect of the differences "may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit" of the price differential, "or with customers of either of them." See *Federal Trade Comm'n* v. *Morton Salt Co.*, 334 U. S. 37, 45–47. In other words, the statute itself spells out the conditions which make a price difference illegal or legal, and we would derange this integrated statutory scheme were we to read other conditions into the law by means of the nondirective phrase, "discriminate in price." Not only would such action be contrary to what we conceive to be the meaning of the statute, but, perhaps because of this, it would be thoroughly undesirable. As one commentator has succinctly put it, "Inevitably every legal controversy over any price difference

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[17] In addition to the statutory provisions regarding injury to competition, set out at p. —, *supra*, there are other relevant portions of the statute, such as the seller's § 2 (b) defense of "showing that his lower price . . . was made in good faith to meet an equally low price of a competitor . . . ." And a proviso to § 2 (a) states:

"That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered . . . ."

And still another proviso to § 2 (a) states:

"That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned."

would shift from the detailed governing provisions—'injury,' cost justification, 'meeting competition,' etc.—over into the 'discrimination' concept for *ad hoc* resolution divorced from specifically pertinent statutory text." Rowe, Price Differentials and Product Differentiation: The Issues Under the Robinson-Patman Act, 66 Yale L. J. 1, 38.[18]

In the face of these considerations, we do not find respondent's arguments persuasive. The fact that activity which falls within the civil proscription of § 2 (a) may also be criminal under § 3 is entirely irrelevant. The [illegible]tial overlap between these sections, which was to a significant extent the by-product of the tortuous path of the Robinson-Patman bills through Congress,[19] has been widely recognized. "[T]his section [§ 3] does not restrict the operation of the prohibitions, with civil sanctions, of the Robinson-Patman amendments to § 2 (a) of the Clayton Act." *Corn Products Co. v. Federal Trade Comm'n*, 324 U. S. 726, 734.[20]

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[18] See also Austin, Price Discrimination and Related Problems Under the Robinson-Patman Act (2d rev. ed. 1959), 18-20; McAllister, Price Control by Law in the United States: A Survey, 4 Law and Contemp. Prob. 273, 291-293.

[19] See Palamountain, The Politics of Distribution, 188-234; Rowe, The Evolution of the Robinson-Patman Act: A Twenty-Year Perspective, 57 Col. L. Rev. 1059.

[20] "Subsection (h) of the Senate amendment [illegible] appears in the conference report as section 3 of the bill itself. It contains the operative and penal provisions of what was originally the Borah-Van Nuys bill (S. 4171). While they overlap in some respects, they are in no way inconsistent with the provisions of the Clayton Act amendment provided for in section 1. Section [illegible] which the amendment prohibits, and takes [illegible] where only civil remedies [illegible] amendment provided in section [illegible] tions as to the particular [illegible] them also the criminal penalties [illegible] 2951, 74th Cong., 2d Sess. [illegible] See also [illegible]

The other materials adduced by respondent do no more than indicate that the factors in question—predatory intent and unreasonably low local price cuts—may possibly be relevant to other matters which may be put in issue in a § 2 (a) proceeding. For example, it might be argued that the existence of predatory intent bears upon the likelihood of injury to competition,[21] and that a price reduction below cost tends to establish such an intent.[22] Practically all of the legislative materials and court decisions relied upon by respondent are explicable on this basis, since hardly any of them are concerned specifically with the meaning of price discrimination.[23] Moreover, many of the legislative expressions cited by respondent may merely be descriptive of the prototype of the evil with which Congress dealt in § 2 (a), rather than delineative of the outer reach of that section. A possible exception is the statement of Representative Utterback. But the primary function of statutory construction is to effec-

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Co., 355 U. S. 373, 378; Austin, Price Discrimination and Related Problems Under the Robinson-Patman Act (2d rev. ed. 1959), 3-4; 108 U. of Pa. L. Rev. 116, 121; 45 Va. L. Rev. 1397, 1400; sources cited in note 19, *supra*.

[21] Of course we do not depart from our holding in *Federal Trade Comm'n* v. *Morton Salt*, *supra*, at pp. 50-51, as to adequacy of proof of tendency to injure competition in cases involving discrimination between purchasers. The instant case, as we have pointed out, involves differences in prices among competing sellers.

[22] *See Balian Ice Cream Co.* v. *Arden Farms Co.*, *supra*, at 369; Att'y Gen. Nat'l Comm. Antitrust Rep. 165; Rowe, Price Discrimination, Competition, and Confusion: Another Look at Robinson-Patman, 60 Yale L. J. 929, 956; Comment, 65 Yale L. J. 34, 74-75; Comment, 49 N. W. U. L. Rev. 197, 215, 224. But cf. *Nashville Milk Co.* v. *Carnation Co.*, 355 U. S. 373, 378; *Federal Trade Comm'n* v. *Ruberoid Co.*, 343 U. S. 470, 484 (dissenting opinion).

[23] Perhaps it is worth noting in this connection that the Senate and House committee reports appear to use the words "discrimination" and "differential" interchangeably. See H. R. Rep. No. 2287, 74th Cong., 2d Sess. 10; S. Rep. No. 1502, 74th Cong., 2d Sess. 5.

tuate the intent of Congress, and that function cannot properly be discharged by reliance upon a statement of a single Congressman, in the face of the weighty countervailing considerations which are present in this case.[24]

Nothing that we have said, of course, should be construed to be the expression of any view concerning the relevance of the factors stressed by respondent to statutory standards other than price discrimination. We wish merely to point out, on the one hand, why respondent's arguments in our view are not pertinent to the issue at bar, and, on the other, that we are not foreclosing respondent from urging in the Court of Appeals that such arguments are material to issues not now before us.

What we have said makes it quite evident, we believe, that our decision does not raise the specter of a flat prohibition of price differentials, inasmuch as price differences constitute but one element of a § 2 (a) violation. In fact, as we have indicated, respondent has vigorously contested this very case on the entirely separate grounds of insufficient injury to competition and good faith lowering of price to meet competition. Nor is it relevant that the Commission did not proceed upon the basis of the respondent's price differentials which existed prior to the period in question in this case. This choice is committed to the discretion of the Commission; and it may well be that the Commission did not believe the remaining statutory elements could be established with respect to other differentials. Our interest is solely with this case, and at this

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[24] Representative Utterback's comment has been criticized as "ambiguous and misleading and . . . too often accepted without analysis." Austin, Price Discrimination and Related Problems Under the Robinson-Patman Act (2d rev. ed. 1959), 18. It is, of course, possible that the Congressman was so intent upon the immediate problem—protection of secondary-line competition—that he did not reflect upon the significance of his statement when applied to primary-line cases.

stage of the litigation that interest is confined exclusively to identifying and keeping distinct the various statutory standards which are part of the § 2 (a) complex.

The judgment of the Court of Appeals is reversed and the case is remanded to that court for further proceedings not inconsistent with this opinion.

Reversed.